

FOOD STANDARDS AGENCY CONSULTATION

Title: Food Standards Agency guidance on the application of date marks to food

CONSULTATION SUMMARY PAGE

Date consultation launched:	Closing date for responses:
25 March 2010	16 June 2010

Who will this consultation be of most interest to?

Food manufacturers, enforcement authorities, analytical laboratories and others with an interest in the application of date marks to pre-packed food.

What is the subject of this consultation?

Revision of FSA guidance on compliance with the UK Food Labelling Regulations 1996 (as amended) implementing Directive 2000/13/EC relating to the labelling, presentation and advertising of foodstuffs, and the publication of new guidance for small businesses..

What is the purpose of this consultation?

To formally seek stakeholders' comments and views on the draft updated guidance on compliance with the UK Food Labelling Regulations 1996 and the new guidance for small businesses.

Responses to this consultation should be sent to:

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Is an Impact Assessment included with this consultation?

Yes ☒

No ☐ See Annex A for reason.



INVESTOR IN PEOPLE

If you would prefer to receive future FSA consultations by e-mail, or if you no longer wish to receive information on this subject please notify the named person in this consultation.



Food Standards Agency guidance on the application of date marks to food

DETAIL OF CONSULTATION

The Food Standards Agency seeks views on the revised guidance to compliance with legal requirements for the date marking of pre-packed food under the UK Food Labelling Regulations 1996 as amended, implementing Directive 2000/1013/EC relating to the labelling, presentation and advertising of foodstuffs

Introduction

1. Food law requires pre-packed food to carry one of two types of date marks; a 'minimum durability' ('best before' date) or a 'use by' date, however, there is no specified list in law of which types of food products should carry which date mark. The 'best before' date will be appropriate to most foods, and is the date until which the food will retain its specific properties when properly stored, e.g. it will not be stale. For food which is microbiologically highly perishable and is, in consequence, likely after a short period of time to pose an immediate danger to human health, a 'use by date' is required. The Agency published guidance on which food should carry a 'use by' date in 2003 (<http://www.food.gov.uk/foodindustry/guidancenotes/labelregsguidance/usebydateguid>). The document aimed to give guidance to food businesses involved in the manufacture, production and retail of pre-packed food on when and how to give a 'use by' date on food labels. It included factors that should be considered when deciding to apply a 'use by' date as well as examples of the types of food that could carry a 'use by' date.
2. There has been some criticism of the current guidance by stakeholders in recent years, including food businesses and enforcement authorities. The former noting that the guidance restricted room for applying the dates it felt necessary. The latter noting that the 'use by' date mark was inappropriately being applied in some cases, resulting in its extension to a wider range of products than should be the case. This guidance has been produced to update the information and address the issues raised above.
3. Feedback from enforcement officers is that small firms can find legal compliance guidance documents difficult to use. Therefore a short simplified version of the full guidance has been produced which should help to make information in the full document more accessible to them. However, it would still be important for the food business operator to consider whether or not they have the in-house expertise to determine the date mark, and where they do not have this expertise, the recommendation would be for them to source this advice to ensure the accuracy and appropriateness of their food date marking.

Proposals

3. In order to assist food businesses in their application of date marks, the Agency has updated and clarified the guidance, and expanded it to include guidance on 'use by' and 'best before' dates. The guidance sets out key principles that should be considered when determining date marks, including a flow chart to aid the date-marking decision-making process. This should help

food businesses set date marks in a way that complies with the law and is more consistent, thereby promoting a high level of consumer protection from inappropriate date marking and confusion around date marks. There is also the potential to reduce food waste. A simplified, 2-page version of the guide to legal compliance is also being issued in order to help small businesses.

The draft guidance has also been revised to align it with the standard FSA template.

Key proposals:

- Updated and comprehensive guide to compliance with the legal requirements for the setting of date marks as required by the Food Labelling Regulations (1996 as amended).
- A best practice section setting out key principles that should be considered when setting date marks, including a decision tree to assist food businesses in their date-marking decision-making process. This will provide a framework to facilitate a more consistent and appropriate approach to setting date marks.
- A simplified, 2-page version of the guidance is also being issued particularly to help small businesses in complying with the legal requirements for setting date marks.
- A section with an industry-generated example of how a 'use by' date and a 'best before' date might be arrived at for two food products, using the flow chart.
- A section which discusses shelf-life and how it is determined.

Consultation Process

5. The Waste and Resource Action Programme (WRAP) and the FSA hosted a joint event in February 2009 on food waste, at which it was agreed, as part of wider actions looking at how food businesses use date markings and display, the guidance on 'use by' dates should be amended. Subsequently, the FSA set up a key stakeholder working group, including representatives from across the food industry and enforcement, to consider the issues were and how the guidance could be amended. The group has helped to produce the two pieces of guidance on which we are consulting.

6. The Agency has published the consultation documents on its website at:

<http://www.food.gov.uk/consultations/>

The consultation will run for 12 weeks. Interested parties are encouraged to contact the Agency with any comments or queries they may have.

7. A summary of responses received will be published on the Agency's website within 3 months of the end of the consultation. All responses received will be considered by the Agency when finalising the revised guidance for publication. Where comments have not been taken into account, reasons for this will be given in the consultation response summary.

Questions asked in this consultation:

GUIDANCE

GQ1: Do you agree that the amended guidance (Part 1 of the document) on compliance with the law is helpful and adequately and clearly reflects the requirements of the legislation? If you disagree with any of it please state the reason(s) why.

Q2: Is Part 2 of the document setting out key principles that should be considered in setting date marks. How might this section be improved?

Q3: Part 2 also includes a decision tree to illustrate how the key principles might be applied in the date-marking decision-making process and includes some examples of particular food groups. One concern is that citing examples might encourage blanket use of the tree without the necessary risk assessment. We would like to have your views on this.

Q4: Is there any additional information that should be included in the guidance?

IMPACT ASSESSMENT

IA1: Do you foresee any negative or positive impact resulting from the introduction of the guidance? Please quantify the impact.

IA2: Is the 'production manager' the appropriate job function for the calculation of familiarisation costs? If not, please provide alternatives with evidence if appropriate.

IA3: Are the time and cost estimates for familiarisation with the new guidance as a whole realistic? Please provide alternative estimates with evidence if appropriate.

IA4: We invite stakeholders to comment on the IA, and in particular, to provide evidence of alternative assumptions and / or other costs and benefits not included.

IA5: How long would it take a small business to read the new, simplified version of the guidance?

8. The Agency welcomes all comments on the draft revised guidance and new guidance for small firms and associated impact assessment from all stakeholders. In particular, food businesses, doctors and other health professionals, charities and other national associations of medical, nutrition or dietetic professionals and enforcement authorities are encouraged to respond with their views.

Responses

9. **Responses are required by close 16 June 2010** Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

Theresa Ekong

Food Composition and Labelling Division

Enclosed

Annex A: Standard Consultation Information

Annex B: Draft Guidance

Annex C: Impact Assessment

Annex D: List of interested parties

Annex E: Draft short version of guidance for SMEs

Queries

1. If you have any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

Publication of personal data and confidentiality of responses

2. In accordance with the FSA principle of openness our Information Centre at Aviation House will hold a copy of the completed consultation. Responses will be open to public access upon request. The FSA will also publish a summary of responses, which may include personal data, such as your full name and contact address details. If you do not want this information to be released, please complete and return the Publication of Personal Data form, which is on the website at <http://www.food.gov.uk/multimedia/worddocs/dataprotection.doc> Return of this form does not mean that we will treat your response to the consultation as confidential, just your personal data.
3. In accordance with the provisions of Freedom of Information Act 2000/Environmental Information Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with the FSA. However, we will take into account your views when making this decision.
4. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

5. A list of interested parties to whom this letter is being sent appears in Annex B. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
6. A Welsh version of the consultation package can be found at www.food.gov.uk
7. This consultation has been prepared in accordance with HM Government Code of Practice on Consultation, available at: <http://www.berr.gov.uk/files/file47158.pdf>
The Consultation Criteria are available at <http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44458.html>
8. Criterion 2 of HM Government Code of Practice on Consultation states *Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*
9. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation. Please see the Impact Assessment at Annex C.
10. For details about the consultation process (not about the content of this consultation) please contact: [Food Standards Agency Consultation Co-ordinator](#), First Floor, Aviation House, 125 Kingsway, London, WC2B 6NH. Tel: 0207 276 8633.

Comments on the consultation process itself

11. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by using the Consultation Feedback Questionnaire at <http://www.food.gov.uk/multimedia/worddocs/consultfeedback.doc>
12. If you would like to be included on future Food Standards Agency consultations on other topics, please advise us of those subject areas that you might be specifically interested in by using the Consultation Feedback Questionnaire at <http://www.food.gov.uk/multimedia/worddocs/consultfeedback.doc> The questionnaire can also be used to update us about your existing contact details.

**Food Standards Agency
guidance on the application
of date marks to food**

25 March 2010

If you require this information in an alternative format – such as audio, large print or Braille – please contact us.

Summary

Intended audience:	All sectors of the food industry involved in the manufacture, production and retail of pre-packed food, including catering establishments.
Regional coverage:	The UK
Purpose:	FSA guidance on date marking is being updated in light of recent concerns that the current guidance is no longer fit for purpose. The aim is to help all sectors of the food industry to understand and comply with the requirements of those regulations concerned with applying date marks on food packaging. It is designed to help food businesses provide date marking information in a way that complies with the law, and is consistent whilst helping consumers make safe use of food and cut down on food wastage. It is not intended to provide suggestions for how date marks should be applied in the case of individual product categories.
Legal status:	<p>The guidance gives both regulatory and best practice advice. Best Practice advice is enclosed in shaded boxes labelled 'Best Practice'.</p> <p>Guidance is set out in two parts: Parts 1 and 2.</p> <p>PART 1 provides informal advice on the legal requirements for the date marking of food.</p> <p>PART 2 sets out principles that should be considered when applying date marks</p>
Essential actions to comply with regulation(s):	<p>For those foods which are required to carry a date mark, food businesses must follow rules for the indication of date marks as set out in the Food Labelling Regulations 1996 as amended (FLR), by ensuring that these foods are marked with the appropriate date mark and any storage conditions that need to be observed.</p> <p>Most pre-packed food is required to carry an appropriate date mark plus any storage conditions required to achieve that shelf-life. The 'best before' date will be suitable for most foods and reflects the period during which the food can be reasonably expected to maintain its optimal condition if properly stored. For foods which are highly perishable from a microbiological point of view and are therefore likely after a short period of time to pose an</p>

	<p>immediate danger to human health, you must apply the 'use by' date. The law stipulates how these dates have to be presented on the labelling.</p> <p>It is the responsibility of those originally labelling the food to set the date mark, for example, the manufacturer, packer or EC seller. The label can only be removed or altered by these individuals or with written permission from them.</p> <p>It is illegal to sell food after the 'use by' date, but food can be sold after the 'best before date provided the product still complies with food safety law.</p>
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REVISION HISTORY

This guidance follows the Government [Code of Practice on Guidance](#). If you believe this guidance breaches the Code for any reason, please contact us using the number on the front sheet. If you have any comments on the guidance, again please contact us on the number on the front sheet.

Revision No.	Revision date	Purpose of revision	Revised by
1	23 March 2010	Guidance	Theresa Ekong

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LEGISLATION REFERRED TO IN THIS GUIDANCE

These Guidance Notes cover the following Regulations:

- In Great Britain, the Food Labelling Regulations 1996, (SI 1996/1499), as amended, hereby referred to as 'FLRs'. http://www.opsi.gov.uk/si/si1996/Uksi_19961499_en_1.htm
- In Northern Ireland, the Food Labelling Regulations (Northern Ireland) 1996, (SI 1996/383), as amended, hereby also referred to as 'FLRs'.
http://www.opsi.gov.uk/Sr/sr1996/Nisr_19960383_en_1.htm
- [Food Safety Act 1990](http://www.opsi.gov.uk/acts/acts1990/ukpga_19900016_en_1). http://www.opsi.gov.uk/acts/acts1990/ukpga_19900016_en_1
- [Food Safety \(Northern Ireland\) Order 1991](http://www.opsi.gov.uk/si/si1991/Uksi_19910762_en_1.htm).
http://www.opsi.gov.uk/si/si1991/Uksi_19910762_en_1.htm
- Directive 2000/13/EC of the European Parliament and the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs;
http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/comm_legisl_en.htm
- Commission Regulation (EC) No. 617/2008 laying down detailed rules for implementing Regulation (EC) No. 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks. <http://faolex.fao.org/docs/pdf/eur75432.pdf>
- Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. Official Journal of the European Commission L 31/1, 1 February 2002.
<http://eur-lex.europa.eu/pri/en.htm>
- Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (as amended). Official Journal of the European Commission L 338/1, 22 December 2005 (MCR). <http://faolex.fao.org/docs/pdf/eur61603.pdf>
- EC Regulation No. 2073/2005 Microbiological Criteria for Foodstuffs - General Guidance. Food Standards Agency, January 2007.
<http://www.food.gov.uk/foodindustry/guidancenotes/hygguid/fhlguidance/>

INTENDED AUDIENCE

1. This guidance is intended for all sectors of the food industry involved in the manufacture, production and retail of pre-packed food required by law to carry date marks, including catering establishments. The overarching aim of the guidance as a whole is to help food businesses provide date marking information in a way that complies with the law and is consistent, whilst helping consumers make safe use of food and potentially cut down on food wastage.

PURPOSE AND LEGAL STATUS OF GUIDANCE

2. These guidance notes have been produced to provide advice on the requirements set out in the Food Labelling Regulations 1996 (as amended) (the FLR), for the date marking of food and best practice in this area.
3. The guidance notes on legal requirements cannot cover every situation and you may need to consider the relevant legislation itself to see how it applies in your circumstances. If you do follow the guidance notes they will help you to comply with the law.
4. Compliance with the advice on best practice is **not** required by law.
5. **To distinguish between the two types of information, all advice on best practice is in shaded boxes, with a heading of Best Practice.**
6. It is set out in three parts:
 - PART 1 provides advice on compliance with the legal requirements for the date marking of food as set out in the FLR, as well as best practice guidance.
 - PART 2 considers key principles/criteria that should be considered when determining date marks including a decision tree to illustrate how the principles may apply. These principles are mainly the factors that affect shelf-life. They can be applied or adapted to apply to any food. Advice is not given on specific food product categories. This is because there are so many variables even within a food product category that it would be difficult and potentially misleading to give product-specific advice. The responsibility for applying date marks lies with food businesses and they are better placed to understand the properties of their products and come to a reasoned decision on both the type of date mark required and the appropriate shelf-life of any specific product. Where this knowledge is not maintained in-house then expert advice should be sought.
 - PART 3 is additional information, which includes 2 industry generated examples to illustrate how the decision tree might apply to specific food

products as well as a section detailing factors that should be considered when evaluating shelf-life.

7. These guidance notes should be read in conjunction with the legislation itself (Directive 2000/13/EC) and other relevant legislation (see Legislation Referred to in this Guidance, page 5). It is the responsibility of individual businesses to ensure their compliance with the law.
8. Businesses with specific queries may wish to seek the advice of their local enforcement agency, which will usually be the trading standards/environmental health department of the local authority.
9. This guidance does not over-ride specific European Union or national provisions which require the use of a particular date mark for specific foodstuffs. For example, the date marking of eggs is controlled by the EU's Egg Marketing Standards Regulation (which require marking with a 'best before' date), and pre-packed fresh poultry meat is required to bear a use by date under the terms of the EU's Regulations on marketing for egg and poultry.

FOOD STANDARDS AGENCY GUIDANCE ON THE APPLICATION OF DATE MARKS:

PART I: GUIDANCE TO COMPLIANCE WITH THE LAW AND BEST PRACTICE

PART I: GUIDANCE ON LEGAL REQUIREMENTS FOR THE DATE MARKING OF FOOD

INTRODUCTION

1. The aim of date mark labelling is to help consumers make safe and optimum use of food. The date mark is an indication by the manufacturer of the length of time a food can be kept under specified storage conditions.

LEGISLATION

2. The key piece of EU legislation for date marking of food is Directive 2000/13/EC, which is implemented in Great Britain by the Food Labelling Regulations 1996 as amended (SI 1996/1499) and in Northern Ireland by the Food Labelling Regulations (Northern Ireland) 1996 (SR 1996/383), hereby known as 'FLR'. This requires pre-packed food to which Part II of the FLR applies, to be marked or labelled with the appropriate durability indication¹.
3. There are two types of date marks:
 - **'Best before'** will be appropriate to most foods and indicates the period for which a food can reasonably be expected to retain its optimal condition (e.g. it will not be stale), and so relates to the quality of the food.
 - **'Use by'** is the required form of date mark for those foods which are highly perishable from a microbiological point of view **and** which are in consequence likely after a relatively short period to present a risk of food poisoning, and so relates to the safety of the food.

Wording from the FLR:

Regulation 20 (1)

The minimum durability must be presented as described below:

- *'the words 'best before' followed by:*
 - a. *the date up to and including which the food can reasonably be expected to retain its specific properties if properly stored, and*
 - b. *any storage conditions which need to be observed if the food is to retain its specific properties until that date.*

¹ This information has to appear in the same field of vision as the following when marked together: the name of the food, the indication of alcoholic strength, the cautionary words in the case of raw milk, the warning required on products consisting of skimmed milk with non-milk fat and an indication of the net quantity.

Regulation 20 (2)

- *The date of the minimum durability shall be expressed in terms of day/month/year (in that order), except that*
 - a. *for a food which can reasonably be expected to retain its specific properties for three months or less, it may be expressed in terms of a day and month only;*
 - b. *for a food which can reasonably be expected to retain its specific properties for more than 3 months but not more than 18 months this date may be expressed in terms of a month and year only, if the words 'best before' are replaced by the words 'best before end', and*
 - c. *for a food which can reasonably be expected to retain its specific properties for more than 18 months, it may be expressed either in terms of a month and year only or in terms of a year only, if (in either case) the words 'best before' are replaced by the words 'best before end'.*

Regulation 20 (3)

- *Either*
 - a. *the date up to and including which a food can reasonably be expected to retain its specific properties if properly stored, or*
 - b. *that date and any storage conditions which need to be observed,*

may appear on the labelling separately from the words 'best before' or 'best before end' provided those words are followed by a reference to the place where the date or the date and storage conditions appear(s) on the labelling.

Regulation 2 (Preliminary) and regulation 21(1)

Where a 'use by' date is required, that is, in the case of food which, from the microbiological point of view, is highly perishable and in consequence likely after a short period to constitute an immediate danger to human health, the term 'use by' shall be followed by:

- a. *the date up to and including which the food, if properly stored, is recommended for use, and*
- b. *any storage conditions which need to be observed.*

Regulation 21(2)

The 'use by' date shall be expressed in terms either of day/month (in that order) or of day/month/year (in that order).

Regulation 21 (3)

Either:

- a. the date up to and including which a food required to bear a 'use by' date is recommended for use, **or***
- b. that date and any storage conditions which need to be observed,*

may appear separately from the words 'use by', provided that those words are followed by a reference to the place where the date/date and the storage conditions appear(s).

- 4. A product with a 'use by' date can be used up to the end of that day, namely, midnight on the day shown. The 'use by' date applies to products in the state in which they were purchased. So for example, a product designed to be sold chilled should not be sold frozen. Where a food requires treatment before consumption, for example, raw meats, the 'use by' date means prepare, e.g. cook by the end of the date declared.
- 5. 'Best before' dates relate to food quality, including taste, texture, aroma and appearance, whilst 'use by' dates relate to food safety. A food which is past its 'best before' date may not necessarily be unsafe to consume, although it may no longer be at its optimal quality.
- 6. Legally, it is the responsibility of those originally labelling the food, namely the manufacturer, packer or EC seller, to set the date mark, together with the storage instructions required to achieve that shelf-life. In practice, the brand owner will be involved in decisions about the setting of the date mark.

Best Practice

Where a food business has insufficient resources to determine which date marks should apply (as may be the case for some SMEs), it is recommended that expert advice be sought, for example, from their Local Authority or a specialist food consultant.

- 7. It is an offence to remove or alter the date mark unless each removal or alteration is authorised in writing by the person who originally set the date mark.
- 8. It is illegal to sell food after the 'use by' date. Retailers can however sell products after the 'best before' provided the product still complies with the Food Safety Act

1990 as amended (the [Food Safety \(NI\) Order 1991](#))² and the General Food Law³. These make it an offence for a person to sell to the purchaser's prejudice any food which is not of the nature, substance or quality demanded by the purchaser, or to sell food which does not meet food safety requirements.

9. There is a legal duty to comply with standards as set out in the Food Safety Act 1990 and the FLR, which was made under this Act. If a business fails to comply with the regulations in terms of the date marking of foods, they can be prosecuted. Under the Food Safety Act 1990 the principle defence is that of 'due diligence', if the FBO can prove that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.
10. Certain food categories or foods are exempt from the requirement to have a date mark under EU/UK law. A list of these may be found at Annex I.

'Display until' dates

11. In addition to the legally required date marks noted above, retailers can use other dates such as 'display until' dates⁴, which aim to help shop staff with stock control. These have no legal basis, and are not aimed at consumers to indicate when to eat the food but are used for commercial purposes only.

Best Practice

Historically both the 'display until' and 'sell by', dates have been used by food businesses for stock control, although the latter is now used less frequently. There is evidence (from Ministers' and general correspondence from consumers) that some consumers do not understand the difference between the legally required date marks and those used by food businesses for stock control purposes. This can mean that food which is safe to eat is thrown away unnecessarily, while food which may be unsafe is consumed. As best practice, the Government has been working with the food industry to see how this confusion might be reduced, for example, by reducing the regularity and or visibility of the voluntary date marks. This would help to reduce the risks around food safety and reduce the amounts of food thrown away unnecessarily.

As best practice, it is suggested that food businesses explore alternative ways of applying stock control dates that make it less visible to consumers and avoid diluting the key messages of the legally required date marks.

² Section 14.1 of the Food Safety Act 1990 as amended.

³ Article 14.1 of Regulation (EC) No 178/2002.

⁴ Historically 'Sell by' dates have also been used for this purpose but less so now.

FREQUENTLY ASKED QUESTIONS ON REGULATORY ASPECTS OF DATE MARKING

Are all foods required to carry a date mark?

Regulation 4 and 22 of the FLR

12. No. Some foods are specifically exempt from the requirement to carry a date mark. These are listed in regulation 22 and bullet point 13 and in paragraph 10 of this guidance.
13. Some foods are exempt from the date marking requirement because they are exempt generally from the labelling provisions of Part II of the FLR (see regulation 4). The labelling of such foods is generally governed by separate legislation which does not require a date mark to be given.
14. Other foods are also exempt from carrying a date mark because of the conditions in which they are sold, for example:
 - Food sold loose and food which is pre-packed for direct sale as defined in the FLR, including in catering establishments;
 - Fancy confectionery products;
 - Food sold in indelibly marked bottles and;
 - Food sold in seasonal selection packs;
15. A comprehensive list can be found at paragraph 10;.

Which foods should carry a 'use by' or a 'best before' date?

16. There is no definitive list of which foods should carry a particular type of date mark. The legislative framework in the FLR is that food to which Part II of the FLR applies (in reality, most pre-packed food with the exception of food listed in paragraph 10) should carry 'an appropriate durability indication', which would normally be a 'best before' date. For those foods which are highly perishable from a microbiological point of view, **and** are in consequence likely after a short period of time to pose an immediate danger to health, a 'use by' date must be used.

What form should the 'best before' date mark take?

Regulation 20(1) and (2) of the FLR

17. The '**best before**' date mark consists of the words '**best before**' and the date in terms of the day, month and year in that order.
18. Alternatively,

for foods expected to keep for 3 months or less	the words ' best before ' may be followed by the date in terms of the day and month
for foods expected to keep for more than 3 months but no longer than 18 months	the date mark may be given in the form ' best before end ' and the date in terms of the month and year
for foods expected to keep for more than 18 months	the date mark may be shown as ' best before end ' followed by the date in terms of the month and year or the year only

19. Where appropriate, any storage conditions which need to be observed if the food is to retain its specific properties until the date shown must also be given.

What form shall the "use by" date mark take?

Regulation 21(1) and (2) of the FLR

20. The '**use by**' date mark must consist of the words '**use by**' and the date in terms of either
- the day and the month, or
 - the day, month and year,

This must be accompanied by any storage conditions which need to be observed.

Is there any flexibility as to where the date mark may be placed on the label?

Regulations 20(3) and 21(3) of the FLR

21. The actual date, and any storage conditions given as part of the date marking requirement, may appear separately from the words '**best before**', '**best before end**' or '**use by**' provided these words are followed by a reference to the place where the date and any storage conditions appear(s) (e.g. *Best before end: see side of pack*).
22. The rules allow information about the location of the storage conditions to be given with the date itself as an alternative, rather than with the words *best before*, *best before end* or *use by*. So for example, instead of the indication on the front of the pack consisting of:

for best before date see side of pack and for storage conditions on frozen food packs see star marking panel,

an alternative would be a declaration on the front of the pack consisting of:

for best before date see side of pack, with the information given on the side of the pack consisting of, the date and the declaration for storage conditions on frozen food packs see star marking panel.

Can the date be abbreviated?

23. As long as the date is shown in the order required by the Regulations (i.e. day, month, year, as appropriate), there is no reason why different forms of expressing the date should not be used, provided it is given in a form which consumers are going to understand. For example, *1 January 2010*, *31 Mar 2010*, *1.6.2010* and *01.08.10* are all quite clear.
24. However, care needs to be taken when using abbreviated indications, such as *use by 1.6*; consumers who might not realise that a *use by* date must be given in at least day and month form might misread this particular example to mean use by 16th and ask 'use by 16th of what?'

Best Practice

In such cases, it would be preferable to use the form *use by 1 June*, or *use by 1 Jun*. Care also needs to be taken when giving year-end date marks, e.g. *best before end 10*, as *this* might be misread by consumers to mean best before end October.

Do details of storage conditions need to be given with the date mark?

Regulations 20(1)(b) and 21(1)(b) of the FLR

25. The FLR requires any storage conditions to be provided which need to be observed if the food is to retain its specific properties until that date.
- They should in general be simple and clear, and may vary from indications such as keep refrigerated or keep in a cool, dry place to indications which incorporate specific storage temperatures or temperature ranges.
 - A maximum temperature should be given at or below which the food should be stored if strict storage temperatures are required to maintain its safety as well as its quality up to and including the date specified.
 - Where various storage conditions are permissible (e.g. fridge, freezer compartment or freezer) the storage conditions should make clear to which option the date given refers (e.g. when stored in a refrigerator or if kept frozen).
 - Both the date and its related storage conditions should apply to the food as bought by the consumer whilst it remains unopened.

What is meant by "special storage conditions or conditions of use"? Isn't this the same as the storage conditions required as part of the date mark?

Regulation 5(d) of the FLR

26. No. The storage conditions which are required to be given with the date mark relate specifically to ensuring that the consumer knows how to store the food if it is to last as long as the date indicates whilst it remains unopened. Special storage conditions or conditions of use should be given

- if the consumer needs to observe certain practices once the packaging of a food has been opened (e.g. *once opened keep refrigerated and consume within 3 days*) or to indicate certain packaging functionality e.g. re-closable packs;
- if various options are available (e.g. *suitable for home freezing*); or
- if foods are not appropriate or suitable for use in certain circumstances (e.g. *not suitable for frying or shake well before use, once defrosted do not refreeze*).

Can food be sold after the date mark?

Regulation 1(d) of the FLR

27. It is an offence to sell any food after the date shown as the 'use by' date relating to it.
28. It is not an offence to sell food after the 'best before' relating to it, provided it still complies with the Food Safety Act 1990 and the General Food Regulations 2004. These make it an offence for a person to sell or supply food which does not meet food safety requirements, or which is not of the nature, substance or quality demanded by the consumer.
29. It would also be illegal to give away food after its 'best before' date if the food has deteriorated so much that it did not meet these general provisions.

Can food frozen before the date mark be defrosted and sold after the date mark?

Regulation 1(d) of the FLR

30. The law makes it an offence to sell any food after the date shown as the 'use by' date relating to it. Therefore, where a product with a 'use by' date is frozen down in its original packaging and then defrosted and sold after the use by date indicated, the food business would be committing an offence.

Can a date mark be altered or removed?

Regulations 44(1)(e) and 46

31. It is an offence to alter or remove a date mark if you are not the manufacturer, packer or EC seller originally responsible for marking the food.
32. However, it is permissible for that specific instance when undertaken with written authorisation from the person who originally set the date mark.

FOOD STANDARDS AGENCY GUIDANCE ON THE APPLICATION OF DATE MARKS:

PART II: PRINCIPLES TO BE CONSIDERED WHEN APPLYING DATE MARKS

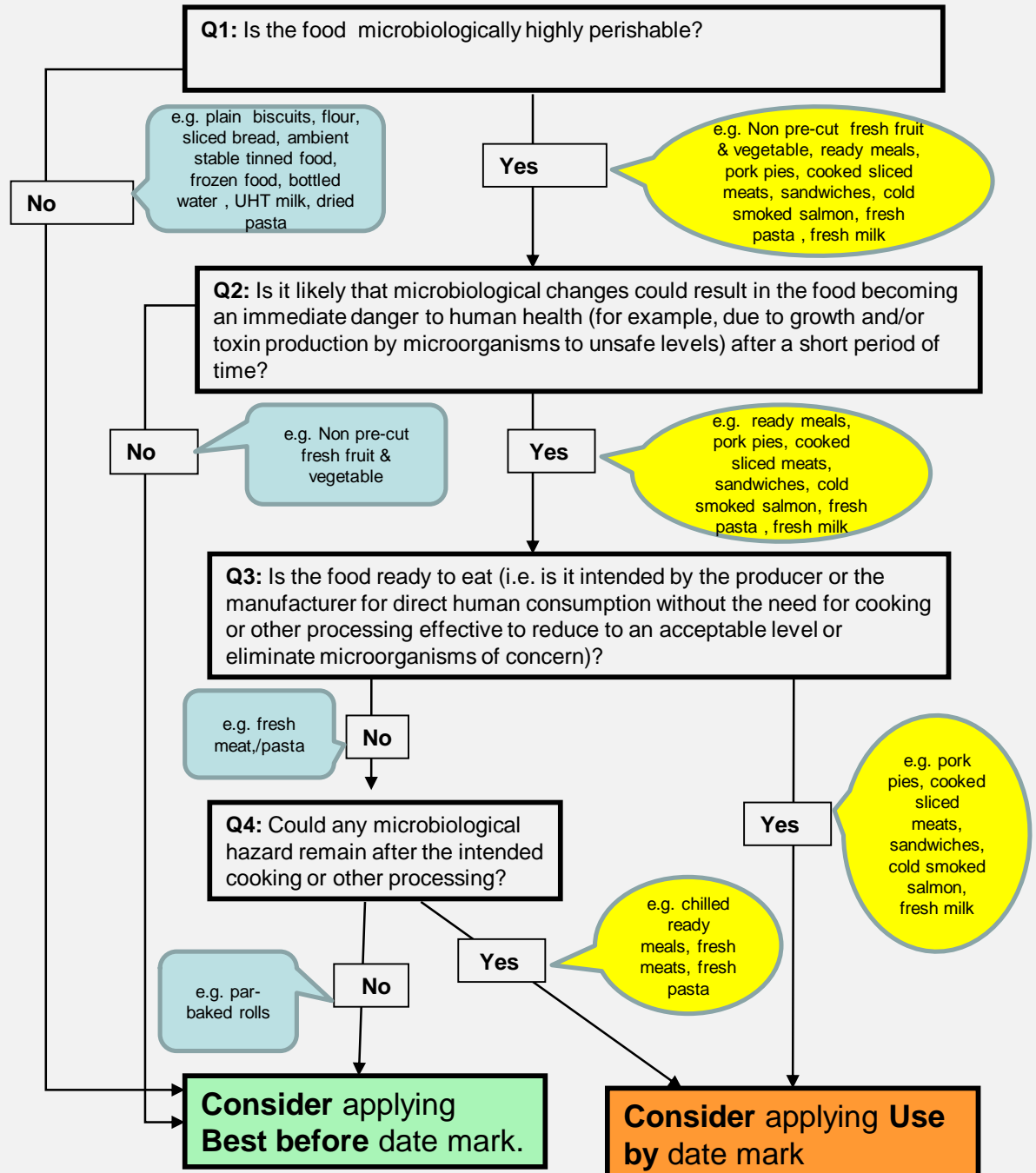
PART II:DATE MARKING PRINCIPLES

This section is not intended to provide detailed (step-by-step) guide to the determination of shelf-life or appropriate/legally applicable date marks; this remains the responsibility of the FBO originally responsible for labelling the food. Rather it is intended to provide overarching guidance, based on key principles, by highlighting the most important factors that should be considered when applying date marks.

33. When setting date marks, it should be borne in mind that 'use by' dates relate to food safety while 'best before' dates relate to the quality of the food.
34. The '**use by**' date mark is a clear instruction to consumers not to consume the product after that date. An inaccurately determined shelf-life can potentially pose a danger to human health. It is an offence to sell food which is past its 'use by' date under the FLR (regulation 44(d)).
35. The '**best before**' date should be applied to shelf stable foods that are not unsafe to consume or perishable foods that do not deteriorate rapidly **and** become unsafe to eat after the date mark
36. The **Decision tree** below illustrates key principles that should be considered in deciding which date marks to apply.
37. Further information relating to important factors to be considered when determining shelf-lives may be found at Annex II.

Decision tree approach for determining date marks

This outlines key points to consider when deciding which date marks to apply. Examples given of food types are merely for illustrative purposes. **All** foods should be subject to thorough risk assessment based on HACCP before deciding on which date marks to apply. Where in-house expertise to do this is lacking, food businesses are recommended to seek expert advice e.g. from a Local Authority, a trade or food research association.



Please note that this diagram does not apply to foods that are exempt from date marking or for which a particular date mark is specified in the legislation.

Part III: Additional Information:

**SECTION 1: INDUSTRY GENERATED EXAMPLES TO SHOW
HOW THE DECISION TREE MIGHT APPLY TO 2 SPECIFIC
PRODUCTS**

**SECTION 2: FACTORS TO CONSIDER WHEN EVALUATING
SHELF-LIFE**

SECTION 3: ANNEXES:

**ANNEX I: FACTORS TO BE CONSIDERED WHEN
EVALUATING SHELF-LIFE OF PRE-PACKED
FOODS**

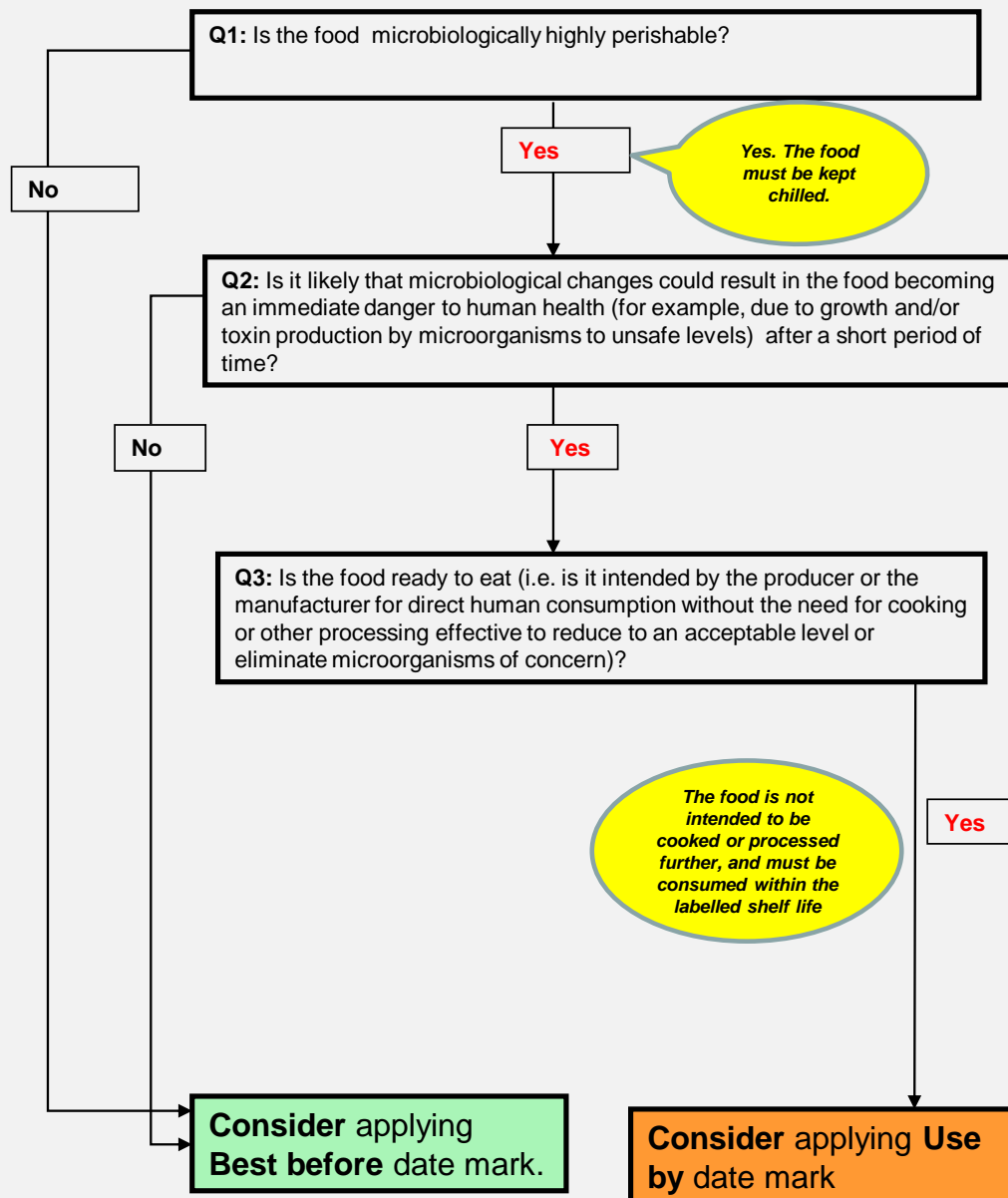
ANNEX II: DEFINITIONS

INDUSTRY GENERATED EXAMPLES

WORKED EXAMPLE 1: SMOKED SALMON

Application of decision tree to smoked cold salmon

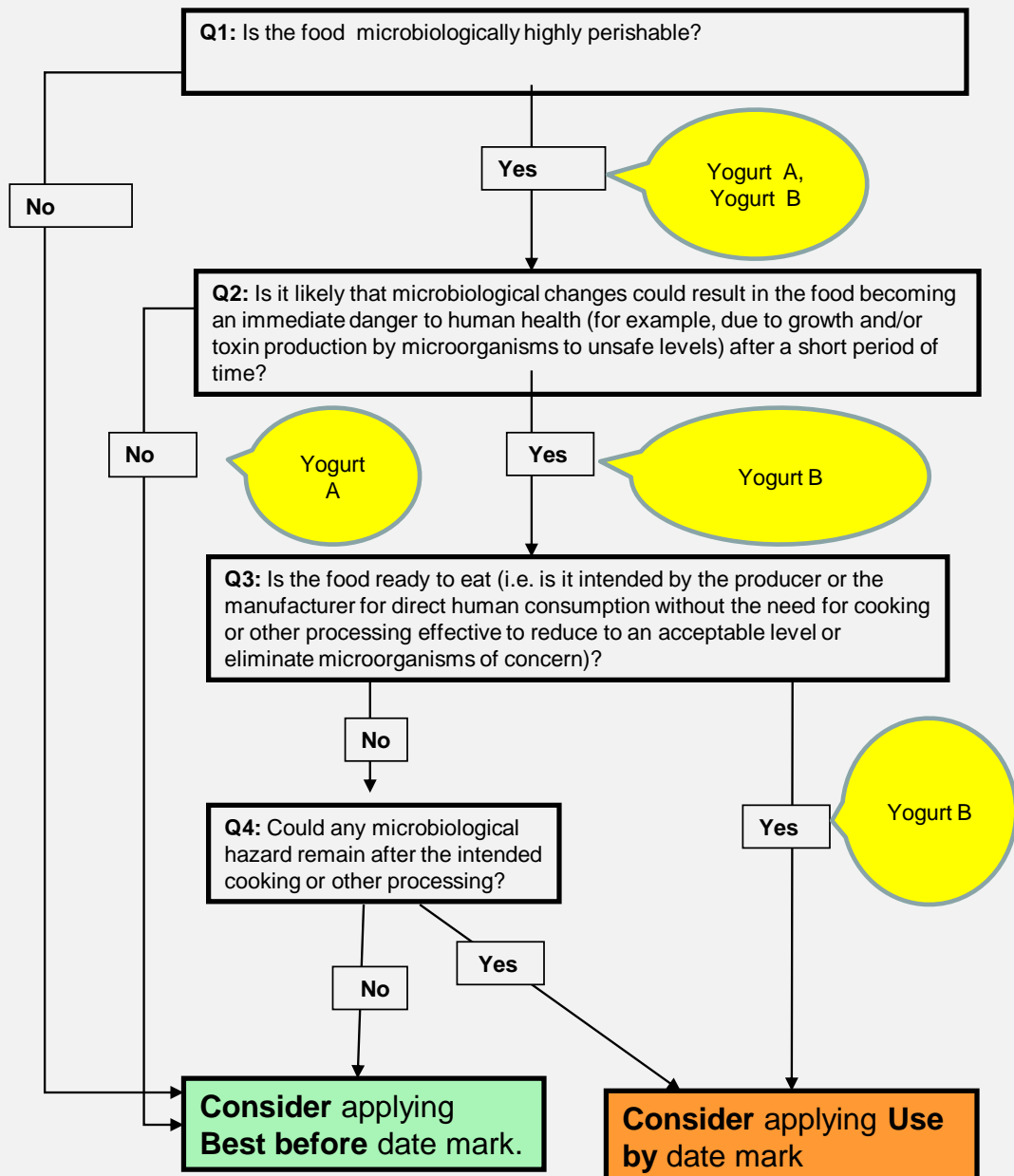
Manufacturer X produces cold smoked salmon which is vacuum packed, which is not heat ed at 90 for 10 minutes. The '10-day shelf-life rule' will therefore apply in this case, unless the product characteristics will control for the risks of *Clostridium botulinum*. Where longer shelf-lives are applied, food businesses will need to ensure products formulation will control for this risk. The tree does not eliminate the need for food businesses to carry out proper risk assessments on their specific products.



Worked example 2: Yogurt

Decision tree application to yogurt

Yogurt A: Produced in factory with good hygiene records demonstrating absence of *Listeria monocytogenes* in product when it leaves factory. Factory has knowledge that because of pH and water activity of product, *Listeria monocytogenes* would not grow in product even if present. **Yogurt B:** Produced in factory where hygiene records show very occasional detection of *Listeria monocytogenes*. Factory does not have evidence that *Listeria monocytogenes* will not grow in product.



SECTION 2: FACTORS TO BE CONSIDERED WHEN EVALUATING SHELF-LIFE OF PRE-PACKED FOODS

What is shelf-life?

1. The Codex Alimentarius defines shelf-life as the period during which a food product maintains its microbiological safety and suitability at a specified storage temperature and, where appropriate, specified storage and handling conditions⁵.

What Influences Shelf-life?

2. Shelf-life is influenced by the following factors:
 - Good Manufacturing Practices (GMP), including Good Hygiene Practices (GHP),
 - Implementation of effective Hazard Analysis and Critical Control Points (HACCP)-based procedures,
 - Quality of raw materials,
 - Processing steps,
 - Packaging (including gas atmosphere),
 - Conditions of distribution,
 - Storage temperature,
 - Product formulation, e.g. pH, water activity (a_w), salt concentration and use of preservatives,
 - The intended use and target consumer.
3. These factors are often used in combination to control microbiological growth and changes in chemical, physical and sensory qualities that lead to the product becoming unsafe.

Product shelf-life

4. Product shelf-life should always be considered on a case-by-case basis, as these factors will vary between different products. Food businesses must therefore understand the characteristics of their own products, the conditions under which their products are manufactured, stored and used and the intended consumer.
5. Where relevant, food businesses must consider the effects of opening the pack on the product's remaining shelf-life and, where necessary, they should provide appropriate instructions to limit retention of the product beyond its shelf-life and to facilitate the safe use of the product.

What determines the end of shelf-life?

6. The end of shelf-life may be determined by various criteria, including the number of particular microorganisms, biochemical degradation, or loss of desired sensory quality.

⁵ Codex Alimentarius (1999) Code of hygienic practice for refrigerated packaged foods with extended shelf-life, CAC/RCP-46 (1999)

7. These criteria should be determined for a product through appropriate shelf-life evaluation. In some cases, EU legislation⁶ prescribes specific microbiological criteria for certain foods and Food businesses must ensure relevant products comply with these criteria. Additional microbiological criteria have also been established in recognised guidelines (e.g. Health Protection Agency⁷, Institute of Food Science and Technology⁸) and these should be considered where statutory criteria have not been set. However where statutory criteria exist, they take precedence over all other guideline criteria.
8. Where criteria used to determine the end of shelf-life relate to safety and indicate that the product is considered unsafe then a use-by date should always be applied.

How is shelf-life evaluated?

9. There are a number of established guidance documents giving practical advice on how to evaluate shelf-life (see references on page 28). These include a number of industry sector guides.
10. Where food businesses do not have the necessary in-house expertise to carry out shelf-life evaluation studies, it is recommended that they seek expert advice, e.g. from their Local Authority, a food research association or a relevant trade association.
11. In practice, allocating an appropriate shelf-life may include:
 - consideration of HACCP (study, review, implementation)
 - consideration of existing historical data, particularly results of microbiological testing on day of production and/or end of shelf-life showing potential for contamination by microbiological pathogens (if applicable) and subsequent survival, growth or toxin production under expected conditions of manufacture, storage and use by the retailer or consumer.
 - use of storage trial studies (shelf-life evaluation), e.g. following the recognised approach set out in Campden BRI guideline no. 46 (Evaluation of product shelf-life for chilled foods). These trials can provide the basis of historical data sets.
 - other approaches may also be used to complement historical data and storage trials where appropriate, such as predictive microbiological modelling, laboratory durability studies and challenge tests.
12. In all cases, GMP, GHP and implementation of effective procedures based on HACCP principles are prerequisites for the safe manufacture of foods. Manufacture of ready-

⁶ Commission Regulation (EC) No. 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs, (as amended), OJ L 338, 22.12.2005, p. 1–26,
http://ec.europa.eu/food/food/biosafety/salmonella/microbio_en.htm

⁷ Guidelines for Assessing the Microbiological Safety of Ready-to-Eat Foods Placed on the Market, Health Protection Agency, November 2009.

http://www.hpa.org.uk/webw/HPAweb&HPAwebStandard/HPAweb_C/1259151923708?p=1231252394302

⁸ Development and Use of Microbiological Criteria for Foods, The Institute of Food Science and Technology (UK), 1999. ISBN 0 905367 16 2.

to-eat (RTE) foods requires a particularly high standard of hygienic preparation, including the separation of RTE and non-RTE food and associated equipment.

13. A system must also be in place to check and review the effectiveness of HACCP-based procedures and hygiene, and records kept of this data.
14. **Note: Safety is primarily ensured by application of HACCP, GMP and GHP** and food businesses should assign a safe shelf-life within their HACCP-based procedures. Shelf-life evaluation can be used to confirm the assigned shelf-life.
15. Studies carried out to determine/verify shelf-life must also be documented and records kept as part of GMP and HACCP-based procedures.
16. Shelf-life should be established using storage temperatures reasonably expected to be maintained during the shelf-life, as should labelled storage temperatures⁹.
17. The decision on which temperature or temperatures is/are used for the shelf-life setting must therefore be justified. As a rule, if the storage temperature used to establish the shelf-life is lower than actual temperatures during distribution and use, this may lead to the underestimation of the growth of microorganisms that cause spoilage and food poisoning, (including *Listeria monocytogenes*, see below), and therefore to the overestimation of the safe shelf-life length.
18. Regulation 2073/2005¹⁰ specifically requires food businesses producing RTE foods that may present a risk of foodborne listeriosis to carry out "shelf-life studies" to demonstrate compliance with the statutory *Listeria monocytogenes* criteria set down in the Regulation. This is particularly important for RTE foods which may support the growth of *L. monocytogenes* (i.e. mostly low acid chilled foods).
19. Regulation 2073/2005 requires that RTE foods must not exceed the limit of 100 colony forming units per gram (cfu/g) for *L. monocytogenes* at any point during their shelf-life therefore food businesses must have evidence for each product to show that *L. monocytogenes* does not exceed 100 cfu/g throughout the shelf-life.
20. This evidence must be based upon relevant shelf-life studies which are defined within the framework of 2073/2005 as:

⁹ Regulation 2073/2005 requires that "The food business is responsible for setting the shelf-life under defined conditions, which should take into account reasonably foreseen conditions of distribution, storage and use."

¹⁰ Commission Regulation (EC) No. 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs, (as amended), OJ L 338, 22.12.2005, p. 1–26,
http://ec.europa.eu/food/food/biosafety/salmonella/microbio_en.htm

- i) Product characteristics and scientific literature – information on this must always be recorded, and
- ii) Historical data, or
- iii) Predictive microbiology, or
- iv) Specific laboratory shelf-life studies, i.e. durability studies, challenge testing

21. Food businesses must keep documentation of shelf-life studies and verification as part of GMP and HACCP procedures. Food businesses can also collaborate in conducting these studies.

22. Further guidance for food businesses on each of these studies is available in “Shelf-life of ready-to-eat food in relation to Listeria” (see page -- for reference). [DN: This document is currently in draft. It is anticipated that this will be published in 2010].

23. Further advice on determining food shelf-lives may be found in the following publications:

- ‘Evaluation of product shelf-life for chilled foods’ Guideline No. 46*- . Campden BRI (2004), ISBN 0-905942-65-5.
- European Commission Staff Working Document ‘Guidance Document on Listeria monocytogenes shelf-life studies for ready-to-eat foods under Regulation (EC) No. 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs’. (26/11/2008) http://ec.europa.eu/food/food/biosafety/salmonella/docs/guidoc_listeria_monocytogenes_en.pdf
- The safety and shelf-life of vacuum and modified atmosphere packed foods with respect to non-proteolytic *Clostridium botulinum*. Food Standards Agency (July 2008) <http://www.food.gov.uk/multimedia/pdfs/publication/vacpacguide.pdf>
- Best practice guidelines for the production of chilled food’, 4th edition, Chilled Food Association, CFA (2005). <http://www.tsoshop.co.uk/bookstore.asp?FO=1160000&DI=561965>
- Codex Recommended International Code of Practice - General Principles of Food Hygiene, CAC/RCP 1-1969, Rev. 3 (1997), Amd. (1999). <http://www.freshquality.org/files/Hygiene.pdf>
- Recommendations for the Production of Chilled Food, 2nd edition European Chilled Food Federation, ECFF, (2006). <http://www.tsoshop.co.uk/bookstore.asp?FO=1160000&DI=561965>
- Determination of Product Shelf-Life, Guidance Note No.18, Food Safety Authority of Ireland, FSAI, (2005): <http://www.fsai.ie/assets/0/86/204/cd13d71c-00ad-4d6b-8525-4c8ff552805.pdf>.

SECTION 3: ANNEXES

ANNEX I: Foods and categories of food which are exempt from the requirement to carry date marks under the FLR date mark under the FLR although other legislation apply

1. Loose food, including food sold in catering establishments;
2. Food that is pre-packed for direct sale as defined in the FLR;
3. Any food prepared otherwise than in the course of a business carried on by the person preparing it, such as one-off charity events;
4. Fancy confectionery products such as products made up of almost entirely of flavoured or coloured sugars;
5. Fancy confectionery products which are individually wrapped and which are intended to be sold as single items;
6. Food sold in indelibly marked bottles;
7. Food sold in seasonal selection packs, provided that individual items are fully labelled;
8. Fresh fruit and vegetables, but not including sprouting seeds and similar products such as legume sprouts, which have not been peeled, cut or similarly treated;
9. Wines or grape musts, in so far as their labelling is regulated by Council Regulation (EEC) No 2392/89 laying down general rules for the description and presentation of wines and grape musts, as amended;
10. Sparkling wines and aerated sparkling wines, in so far as their labelling is regulated by Council Regulation (EEC) No 2333/92 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines;
11. Liqueur wines, semi sparkling wines and aerated semi sparkling wines, in so far as their labelling is regulated by Council Regulation (EEC) No. 3895/91 laying down rules for the description and presentation of special wines, and Commission Regulation (EEC) No.3901/91 laying down certain detailed rules on the description and presentation of special wines;
12. Any spirit drinks, in so far as their labelling is regulated by Council Regulation (EEC) No. 1576/89 laying down general rules on the definition, description and presentation of spirit drinks, Commission Regulation (EEC) No.3773/89 laying down transitional measures relating to spirituous beverages, as amended, and Commission Regulation (EEC) No. 1014/90 laying down detailed implementing rules on the definition, description and presentation of spirit drinks, as amended;
13. Any drink with an alcoholic strength by volume of 10 per cent or more;

14. Wine, liqueur wine, sparkling wine, aromatised wine and any similar drink obtained from fruit other than grapes (e.g. cider/perry);
15. Any soft drink, fruit juice or fruit nectar or alcoholic drink, sold in a container containing more than 5 litres and intended for supply to catering establishments;
16. Chewing gums and similar products;
17. Any additive sold as such which is required to be labelled in accordance with regulation 4(3) of the Extraction Solvents in Food Regulations 1993, or the appropriate provisions of any of the additives regulations;
18. Edible ices in individual portions;
19. Any flour confectionery and bread which, given the nature of its content, is normally consumed within 24 hours of its preparation;
20. Vinegar;
21. Cooking and table salt and
22. Hens eggs, in so far as their labelling is regulated in Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products and Commission Regulation (EC) No. 589/2008 laying down detailed rules for implementing Council Regulation (EC) No. 1234/2007 as regards marketing standards for eggs. Note that these Regulations make separate provision for the date marking of hens eggs.

ANNEX II: DEFINITIONS

In these guidance notes, the following key terms may be assumed to have the meanings set out below. Where these are legal definitions, the relevant legislation is cited.

Definition	Meaning	Source
Short period	This is not defined in legislation. It could be taken to be a period of days rather than longer, as is current industry practice, but we would welcome comments on this.	Industry practice
Brand	The name or mark under which a product is sold notwithstanding the possibility that it may also be marked with a supplier's name or word such as 'supplied to' or 'manufactured for'.	UK Law Food Safety Act 1990
Brand owner	An FBO packing a product under their own name or mark.	MCR Guidance v1.2 CFA Micro Testing & Interpretation Guidance
Chilled food	A prepared food that for reasons of safety and/or quality is designed to be stored at refrigeration temperatures (at or below 8°C, but not frozen) throughout its entire life.	Chilled Food Association (CFA) Definitions WG, based on CFA GL4 and ECFF2
Food business	Means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food	Regulation (EC) No 178/2002
FBO	The natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control	Regulation (EC) No 178/2002
Food safety	Assurance that food will not cause harm to the consumer when it is prepared and/or eaten according to its intended use.	Codex
Hazard Analysis Critical Control Point (HACCP)	A system that identifies evaluates and controls hazards which are significant for food safety.	Codex
Long shelf-life	This is not defined in legislation. It could be taken to be more relevant to a period measured in weeks or months, not days as it current industry practice, but we would welcome your comments.	Industry practice
Manufacturing shelf-life	The shelf-life of a food in the factory up to the time of packing.	CFA Definitions WG, based on CFA GL4
Organoleptic	Relating to an attribute of a product perceptible by the sense organs, e.g. its texture, flavour, aroma, colour.	CFA GL4

Perishable food	Food that is defined as being subject to decay or destruction, usually food that has been, for example minimally processed or not otherwise preserved and which relies on refrigerated storage in order to reduce the rate of decay and loss of quality.	Codex
Product shelf-life	The shelf-life of a product once it has been packed.	CFA GL4
Ready-to-eat (RTE)	Food intended by the producer or the manufacturer for direct human consumption without the need for cooking or other processing effective to reduce to an acceptable level or eliminate microorganisms of concern	Regulation (EC) No. 2073/2005
Safe food	Food that is not 'unsafe'.	Accepted understanding
Short period of time	Although this is not defined in legislation, this could be taken this to be a period of days rather than longer. We would welcome your views.	Industry practice
Sale, including placing on the market	Holding food for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not. And the sale, distribution, and other forms of transfer themselves.	Regulation (EC) No 178/2002/EC
Spoilage	Deterioration in the colour, flavour, odour or consistency of the food	Accepted understanding
Unsafe food	Food that is a) injurious to health or b) unfit for human consumption. This needs to take into consideration the normal conditions of use of the food by the consumer and at each stage of production, processing and distribution, and the information provided to the consumer on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods	Regulation (EC) No. 178/2002

RESPONSIBILITIES

1. The Agency is responsible for implementing the legislation, giving advice on this legislation and any guidance it produces.
2. Local authority Trading Standards Department or Environmental Health Department are responsible for enforcing the law and can give advice on the labelling of specific products.

The addresses for all correspondence relating to the issues set out in this advice are as follows:

In England:

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LACoRS

The Local Authorities Coordinators of Regulatory Services
Local Government House
(Formerly known as Transport House)
Smith Square, London SW1P 3HZ
Tel: 0207 665 3863

Summary: Intervention & Options

Department /Agency: Food Standards Agency	Title: Impact Assessment of Guidance on the Application of Date Marks to Food	
Stage:	Version: 1	Date: 25 March 2010
Related Publications:		

Available to view or download at:

<http://www.food.gov.uk>

Contact for enquiries: Theresa Ekong

Telephone: 0207-276-8192

What is the problem under consideration? Why is government intervention necessary?

EU legislation requires pre-packed food to carry either a 'best before' or a 'use by' date, implemented in the UK by the date marking provisions in the Food Labelling Regulations 1996 (as amended). The date mark is there to help consumers distinguish between highly perishable and longer shelf-life food, thereby facilitating the safe and least wasteful use of food. Although it is the responsibility of food businesses to apply date marks, there is no definitive list of foods that should carry either. It can also be particularly difficult for small businesses, which may not have easy access to the technical expertise required to determine the correct use of date marks. The Government therefore produced guidance on the application of 'use by' dates over ten years ago, which was re-issued by the Agency in 2003. Following a recent review, it is considered to be out of date and no longer fit for purpose. The updated guidance advises on the requirements for the legal application of 'use by' **and** 'best before' date marks, as well as on key principles that should be considered when determining which date marks should apply. This approach should also encourage a more consistent approach to the setting of date marks.

What are the policy objectives and the intended effects?

The policy objective is to update current guidance and so encourage a more consistent approach to the application of date marks, thereby facilitating safe and optimal use of food by consumers, and potentially helping to reduce food waste.

What policy options have been considered? Please justify any preferred option.

Option 1: Do nothing. Leave current guidance in place

Option 2: Remove all guidance

Option 3: Issue new guidance.

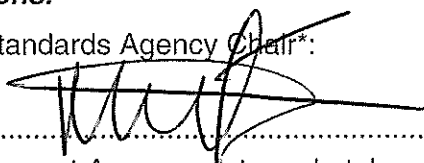
Option 3 is the preferred option as it will improve consumer protection but at the lowest cost to industry compared with other options.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Following the implementation of the Food Information Regulation (expected not earlier than 2011), we will review the effectiveness of the guidance.

Ministerial/CEO Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the Food Standards Agency Chair*:



Date: 22/3/10

* for non-legislative Impact Assessments undertaken by non-ministerial departments/agencies

Summary: Analysis & Evidence

Policy Option: 2

Description: Removal of guidance on compliance with Food Labelling Regulations

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' One-off familiarisation costs pertaining to reading the Regulations will increase from £300,000 to £600,000, resulting in an incremental cost of £300,000. Note these costs refer to Great Britain only.
	One-off (Transition)	Yrs	
	£ 600,000		
	Average Annual Cost (excluding one-off)	Cost	
	£		Total Cost (PV)
			£ 600,000
Other key non-monetised costs by 'main affected groups'.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' No benefits quantified. Relative to option 1, our preferred option (option 3) imposes lower costs to industry and option 2 imposes higher costs to industry, for the same level of benefit.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)	Benefit	
	£ 0		Total Benefit (PV)
			£0
Other key non-monetised benefits by 'main affected groups'			
Although the benefits of the Food Labelling Regulations will be maintained, there will no longer be benefits from guidance.			

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
		£ -600,000	£ -600,000

What is the geographic coverage of the policy/option?			GB	
On what date will the policy be implemented?			As soon as guidance is published	
Which organisation(s) will enforce the policy?			Local Authorities	
What is the total annual cost of enforcement for these organisations?			£ N/A	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices) N/A

(Increase - Decrease)

Increase of £ 0

Decrease of £ 0

Net Impact £ 0

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Summary: Analysis & Evidence

Policy Option: 3

Description: Development of guidance on compliance to legal requirements for the date marking of food

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' One-off familiarisation costs pertaining to reading the guidance will be reduced from £300,000 to £150,000, resulting in an incremental cost saving of £150,000 from the adoption of option 3. Note these costs refer to Great Britain only.
	One-off (Transition)	Yrs	
	£ 150,000		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV)
			£ 150,000
Other key non-monetised costs by 'main affected groups'.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' No benefits quantified, see non-monetised benefits below. Relative to option 1, our preferred option (option 3) imposes lower costs to industry and option 2 imposes higher costs to industry, for the same level of benefit. Option 3 is therefore the most cost-effective option.
	One-off	Yrs	
	£ N/K		
	Average Annual Benefit (excluding one-off)		
	£ N/K		Total Benefit (PV)
			£N/K
Other key non-monetised benefits by 'main affected groups' Option 3 will facilitate a more consistent approach to the setting of date marks and improve consumer protection. Guidance will particularly benefit small businesses that would normally have difficulty accessing this information. There may also be potential impact on consumer confidence in making use of date marks and food waste.			

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
		£ -150,000	£ -150,000

What is the geographic coverage of the policy/option?				GB	
On what date will the policy be implemented?				As soon as guidance is published	
Which organisation(s) will enforce the policy?				Local Authorities	
What is the total annual cost of enforcement for these organisations?				£ N/A	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				No	
What is the value of the proposed offsetting measure per year?				£ N/A	
What is the value of changes in greenhouse gas emissions?				£ N/A	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)		Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?		No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices) N/A

(Increase - Decrease)

Increase of £ 0

Decrease of £ 0

Net Impact £ 0

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Reason for intervention and the intended effect of the measure

The guidance note 'What foods should carry a 'use by' date?'¹ was issued by the Food Standards Agency in February 2003 to help food business operators comply with the legal requirements for the date marking of food. Feedback from industry and enforcement has indicated that this guidance could be improved. Therefore the publication of new guidance is proposed to make it easier for food business operators to comply with the Regulations, whilst providing meaningful information for the consumer.

Intended Effect

The intended effect of the redrafted guidance and the new guide to compliance with the law for small firms is to help food business operators provide date marking information in a way that complies with the Food Labelling Regulations, whilst helping consumers make safe use of food and potentially cut down on food wastage. The intention is that the new guidance will help industry apply date marks more appropriately and more consistently and be easier for businesses to understand, hence making it easier for them to comply with the law. This will improve consistency of the application of date marks across the industry, improving the quality of information given to consumers, thereby improving consumer protection. A simplified, 2-page version of the guide to compliance with the law is also being issued in order to help small businesses better understand the requirements of the law.

Background

The aim of date marking is to help consumers make safe and optimal use of food. The date mark is an indication by the manufacturer of the length of time a food can be kept under specified storage conditions.

The key piece of EU legislation for the date marking of food is Directive 2000/13/EC, which is implemented in Great Britain by the Food Labelling Regulations 1996 (as amended) (SI 1996/1499) and in Northern Ireland by the Food Labelling Regulations (Northern Ireland) 1996 (SR 1996/383).

Directive 2000/13/EC requires most pre-packed foodstuffs to carry a date of minimum durability. This will normally be a 'best before' date, which is the date up to and including which the food product will retain its optimum condition when stored appropriately. The Directive also requires that a 'use by' date rather than a 'best before' date be used on food products 'which, from the microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health'. Generally speaking therefore, 'use by' dates relate to the safety of the food, while 'best before' dates relate to its quality.

The Food Standards Agency published guidance on which foods should carry a 'use by' date in 2003 in order to help industry comply with the law. However, concern has been raised in recent years that this guidance may be over-prescriptive, tending to encourage the application of 'use by' dates to a far wider range of products by industry than should be the case. There is also some suggestion of inconsistent application of both types of date marks, a consequence of which has been some consumer confusion, which in turn has prompted complaints to enforcement authorities and the Government.

There is no specified list of foods that should bear a particular type of date mark: rather the law makes it the responsibility of food businesses to determine which date marks should apply to particular foods. One potential consequence can be that businesses can arrive at different date marks by employing different criteria in their date-marking decision-making processes. The situation can be even more complicated for smaller businesses which may not have the expertise to carry out the date-marking decision-making process in-house.

¹ <http://www.food.gov.uk/foodindustry/guidancenotes/labelregsguidance/usebydateguid>

The Food Standards Agency has responsibility for food labelling policy in the UK, part of which includes facilitating the provision of labelling information which is accurate and not misleading, thereby facilitating informed consumer choice.

The draft document updates and expands advice on the legal requirements for the date marking of food, including on the requirements for both 'best before' and 'use by' date marking. In addition, the guidance provides advice on key principles or criteria that should be considered when setting date marks. Feedback from enforcement officers is that small firms can find full guidance documents difficult to use, therefore the short simplified version of guidance to compliance with the law should help to make this information more accessible to this group.

The new guidance will help to improve the clarity and consistency of date marking provided by food businesses on food labels, making it much easier for consumers to understand and have confidence in it.

A new framework legislation, the Food Information Regulation (FIR), is currently being discussed in Brussels which will revoke Directive 2000/13/EC and its implementing SIs. As significant changes in the date marking provisions are not expected, it is anticipated that the new guidance will continue to be relevant after the FIR comes into being.

Options

Option 1: Do nothing – retain current guidance

Option 1 is the baseline for this proposal. Adopting this option would mean there is no change to the current regulatory environment. There are no incremental benefits or costs associated with this option.

Option 2: Remove all guidance

Adopting this option would mean that business operators would be left to interpret the Food Labelling Regulations 1996 without any guidance, which may lead to the regulations being inconsistently applied. Businesses would continue to face significant ongoing administrative burden costs of applying the regulations. There are no incremental benefits associated with this option.

Option 3: Issue new guidance to assist food business operators to comply with date marking regulations.

Option 3 is the preferred option. By issuing new guidance it is estimated that the benefits associated with the current guidance will stand, however the cost of complying with the Food Labelling Regulations 1996 will reduce, as outlined below. There will also be further benefits to food business operators and consumers, which cannot be quantified, from an increase in the clarity and consistency of the guidance.

Costs and benefits of options

Option 1

While there are no incremental costs and benefits of Option 1, as it is the baseline, it is useful to note the costs that accrue to this option and to compare these with the resulting savings from Option 2 as shown in tables 1 and 2 below.

Option 2

Familiarisation costs

It is assumed that if no guidance were in place to help businesses interpret the Food Labelling Regulations, it would take a manager approximately 4 hours to read and become familiar with the regulations. The average hourly wage rate for a production manager is £19.38, which is up-rated by 30% to account for overheads to £25.19. For 4 hours this amounts to £100.78 per business, or £600,000 (rounded) for all businesses. Assuming that the current guidance takes a production manager 2 hours to read and become familiar with, removing all guidance will result in additional cost to industry of approximately £300,000 (rounded).

Do you foresee any negative or positive impact resulting from the introduction of the guidance? Please quantify the impact.

Option 3

Familiarisation costs

For the purposes of these calculations, we have assumed that the regulatory affairs or production manager would be the individual responsible for interpreting and integrating the recommendations of the guidance into the business. We have estimated that the average hourly wage rate for this individual is £19.38, which is up-rated by 30% to account for overheads to £25.19. It is estimated that it will take a production manager approximately 1 hour to read and become familiar with the new guidance, which for all businesses affected results in a familiarisation cost of £150,000 (rounded). Assuming that the current guidance takes a production manager 2 hours to read and become familiar with, the adoption of new guidance will result in a cost saving to industry of approximately £150,000 (rounded).

Is the 'production manager' the appropriate job function for the calculation of familiarisation costs? If not, please provide alternatives with evidence if appropriate.

Table 1: The cost per business of each option

Activity	Option 1: Do Nothing	Option 2: Remove guidance	Option 3: Issue new guidance
Number of hours reading time per business	2	4	1
Wage rate ²	19.38	19.38	19.38
Overheads inflator	30%	30%	30%
Wage rate plus overheads	£25.19	£25.19	£25.19
Cost per business	£50.39	£100.78	£25.19

Is the time and cost estimates for familiarisation with the new guidance as a whole realistic? Please provide alternative estimates with evidence if appropriate.

Table 2: Maximum industry costs of each option³

	England	Scotland	Wales	N. Ireland	GB	UK
Number of businesses⁴	4,915	665	360	390	5,940	6,330
Total cost associated with Option 1	£247,657	£33,508	£18,140	£19,651	£299,305	£318,956
Total cost associated with Option 2	£495,314	£67,016	£36,279	£39,303	£598,609	£637,912
Total costs associated with Option 3 (preferred)	£123,829	£16,754	£9,070	£9,826	£149,653	£159,479

The costs presented in table 2 show that option 3 is the least cost option. For the UK as a whole, option 3 results in a saving of £160,000⁵ (rounded) compared to the 'do nothing' option, or a saving of £480,000⁶ (rounded) compared to option 2. For Great Britain only, option 3 represents a saving of £150,000⁷ (rounded) compared to the 'do nothing' option, or a saving of £450,000⁸ (rounded) compared

² Wage rate used is the median hourly wage rate of "production manager" as reported in the Annual Survey of Hours and Earnings (ASHE) 2009, available at <http://www.statistics.gov.uk/statBase/product.asp?vlnk=15313>

³ Note the costs presented in table 2 refer to those incurred by food manufacturers only, food retailers have not been taken into account. Although date marks are important to retailers, the majority of date marking is undertaken by manufacturers.

⁴ Number of businesses as reported in the IDBR (Inter-Departmental Business Register) from the ONS, based on Standard Industry Classification (SIC) code 10; the manufacture of food products
http://www.statistics.gov.uk/methods_quality/sic/downloads/SIC2007explanatorynotes.pdf

⁵ Total cost associated with option 1, minus total costs associated with option 3 = £318,956 – £159,479 = £159,477

⁶ Total cost associated with option 2, minus total costs associated with option 3 = £637,912 – £159,479 = £478,433

⁷ Total cost associated with option 1, minus total costs associated with option 3 = £299,305 – £149,653 = £149,652

to option 2. It should be noted that the figures presented in table 2 reflect the cost to all food manufacturers of reading and becoming familiar with the guidance. However, as the legislation to which the guidance refers has not changed, it is likely that these costs, and hence cost savings, will only apply to new entrants to the market; incumbents will already be familiar with the legislation surrounding date marking. Therefore the *total* costs of each option can be taken as an over-estimate.

Non-monetised Benefits

The main benefit arising from option 3 is the greater ease with which food business operators can understand how to be compliant with legislation. This will result in greater consistency across manufacturers and an improvement in the level of information symmetry between manufacturers and consumers. If compliance becomes easier it is likely that instances of non-compliance will fall, increasing consumer safety.

We invite stakeholders to comment on the IA, and in particular, to provide evidence of alternative assumptions and / or other costs and benefits not included.

Administrative Burden Costs

As the Food Labelling Regulations 1996 as to which the guidance applies are not subject to change, there will be no incremental changes in the administrative burden cost due to the proposed new guidance.

Consultation

The need for an updated guidance was identified at a key stakeholder event on date marking and food waste jointly hosted by WRAP and FSA in February 2009. A Working Group, chaired by the FSA, was subsequently set up to consider the issues and how the guidance might be amended, with representation from across the food industry and enforcement.

Simplification

The publication of new guidance which will facilitate a more appropriate and consistent application of date marking on food labels, reducing the time required by businesses to comply with the Regulations will be reduced. The introduction of guidance for small firms should make compliance easier.

Implementation and Review

This should expand the information given on page 2 and outline when and how the policy will be implemented and when it will be reviewed.

The updated guidance will apply once published and will replace the current guidance which will then be withdrawn. Following the coming into force of the Food Information Regulation (expected not earlier than 2011) which will replace Directive 2000/13/EC and will be directly applicable, we will review the effectiveness of the guidance.

⁸ Total cost associated with option 2, minus total costs associated with option 3 = £598,609 – £149,653 = £448,956

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	Yes
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Use the space below to indicate your consideration of at least the following specific impact tests.

Competition Assessment

The proposed change to guidance does not impose any significant costs to industry and applies to all manufacturers equally. It should not limit the number or range of suppliers either directly or indirectly or reduce the ability of, or incentives to, suppliers to compete. Therefore, it is not expected to impose significant impact on competition.

Small Firms Impact Test

Say in this section how many SMEs were consulted for the Small Firms Impact Test. Also state what flexibilities were considered for SMEs as the policy was developed.

The table below breaks down the cost savings associated with adopting option 3 by business size, assuming that the savings (as outlined in table 2) are constant across businesses.

Table 3: Cost saving associated with adopting option 3, by business size

	Employment Size						
	Micro	Small			Medium		Large
	0 - 4	5 - 9	10 - 19	20 - 49	50 - 99	100 - 249	250 +
Number of firms	2,655	1,070	760	700	305	245	205
Saving per firm from adopting option 3	£25	£25	£25	£25	£25	£25	£25
Total saving from option 3	£66,890	£26,958	£19,147	£17,636	£7,684	£6,173	£5,165

A simplified shorter version of the guidance (found at Annex XXX) has been produced with smaller businesses particularly in mind. This should make it easier for them to understand the key requirements for the proper date marking of food and to determine whether they have the in-house expertise to set date marks for their products or whether they need to source this expertise from outside.

How long would it take a small business to read the new, simplified version of the guidance?

Sustainable development

Impacts under the three pillars of sustainable development (environmental, economic and social) have been, and continue to be, considered in the preparation of this Impact Assessment. Option 3 is “relatively more sustainable” rather than the “preferred option” in the SD impact test.

Race equality issues

The proposed change to the current guidance of the introduction of new guidance for small firms does have any incremental impact on any person from a particular race.

Gender equality issues

The proposed change to guidance does not impose any restrictive compliance on any person from a particular gender.

Disability equality issues

The proposed change to guidance does not impose any restrictive compliance on any person with a disability.

We invite stakeholders to comment on the Impact Assessment, and, in particular, to provide evidence for alternative assumptions and / or other costs and benefits included.

List of Interested Parties

Annex D

3663 First for Foodservice	Birmingham Library Services
4Children	Bodycote Birmingham
A.G. Barr plc	Bolton Council
Abbot Laboratories Limited	Bonnia Petite Banqueting Ltd
ABR Foods	Booker Ltd
ADAMSON BSMG	Boots UK Limited
Advertising Association	Bourne Leisure (Butlins)
Advertising Standards Authority	Bourne Salads
Advisory Body for Social Services Catering	Bournemouth University
Advisory Committee on Animal Feedingstuffs	BPEX and EBLEX
Age Concern	Bradford Council of Mosques
Agricultural Industries Confederation	Brakes Group
Alcontrol Laboratories	Brakes Group
Al-Khoei Foundation	Brent Council
Allchem International	Bristol City Council (855)
Allied Bakeries Ltd	Britannia Health Products Ltd
Allied Domeco Retailing Ltd	British Airways Health Services
Allied Technical Centre	British Association for Shooting and Conservation
Allsports International Ltd	British Beekeeper's Association
Alpha flight services	British Beer and Pub Association
American Food International	British Caramel Manufacturers Association
American Peanut Council	British Cheese Board
Amicus	British Coffee Association
Animal Medicines Inspectorate	British Dental Association
An-Nisa Society	British Dietetic Association
Asda Stores Limited	British Egg Industry Council
Ashtown Food Research Centre	British Essential Oils Association
Ashwell Associates	British Fermentation Products
Assistante Sectorielle Agro-Alimentaire	British Food Importers & Distributors Association
Associated British Foods plc	British Frozen Food Federation
Association of British Abattior Owners	British Fruit Juice Association
Association of Cereal Food Manufacturers	British Goat Society
Association of Convenience Stores	British Heart Foundation
Association of Muslim Scholars	British Herbal Medicine Association
Association of Pastry Chefs	British Hospitality Association
Association of Port Health Authorities	British Humanist Association
Association of Public Analysts of Scotland	British Meat Processors Association
Association of Radical Midwives	British Nutrition Foundation
Assured British Meat	British Pig Association
Assured Food Standards	British Potato Marketing
Authentix - Product Authentication	British Poultry Council
Baby Milk Action	British Retail Consortium
Baker & McKenzie	British Sandwich Association
Bakkavor (Birmingham) Ltd	British Soft Drinks Association Ltd
Bangladesh Caterers Association UK	British Sugar plc
Barbour Index Plc	British Veterinary Association
Barentz BV	Britvic plc
Batemans	BSI British Standards Institution
Bee Farmers' Association of the UK	Buckinghamshire County Council
Bee Services	Buckinghamshire Health Authority
Belso's (UK) Cereals Ltd	Business In Sport and Leisure
Bernard Matthews Farms Ltd	Cadbury Schweppes plc
Berry Ottawayand Associates Limited	Camacon Law Solicitors Ltd
Beth-Din	Cambridge Manufacturing Company Ltd
BHF Health Promotion Research Group	CAMedica Consulting
Bird & Bird	Campden BRI
Bird & Bird	CAMRA (Campaign for Real Ale Ltd)
Birmingham City Laboratories	Cantox Health Sciences International

List of Interested Parties

Annex D

Cape Road Clinic Warwick	DBC Foodservice
Cartmel Sticky Toffee	Del Monte Foods (UK) Ltd
Caver Wilde Communications Ltd	Department for Business, Innovation and Skills
Catalent Pharma Solutions	Department for Culture, Media and Sport
Caterer & Hotelkeeper	Department for Environment, Food and Rural Affairs
Catering Update	Department for Innovation, Universities and Skills
CCI	Department of Local Government & Environment
Cellife UK LTD	Dept of Agriculture for NI
Centre for Food & Health Studies Ltd	Derbyshire County Council
Cereal Partners UK	Diageo plc
Charles Barker Plc	Dr Stuart's Botanical Teas
Chartered Institute of Environmental Health	Druces & Attlee
Chemist & Druggist	Durham County Council
Child Action Prevention Trust	EA Griffiths and Son
Chilled Food Association Ltd	East and North Herts. NHS Trust
Chinese National Healthy Living Centre	East Riding of Yorkshire Council
Chocolates for Chocoholics Ltd	East Sussex County Council
Christchurch Borough Council	Edlong Company Ltd
Churches' Commission for Inter-Faith Relations	Elks Biscuit
Clarke Willmott Solicitors	Ellis Labels & Systems Ltd
Coastal Trading	English Tourist Board
COBRA	Environmental Data Services
Coca-Cola Great Britain & Ireland	Environmental Health & Trading Standards Service
Coeliac UK	Essential Trading Co-operative Ltd
Community Foods Ltd	Essfoods Limited
Community Nutrition Group	Eurofins Laboratories Ltd
Community Practitioners & Health Visitors Association	European Federation of Health Product Manufacturers Association
Confederation of British Industry	European Food Law Association UK
Confederation of Indian Organisations (UK)	Eversheds
Constellation Europe (Holdings) Ltd	Exova (UK) Ltd
Consumer Focus	F I Data Services
Consumer Focus Wales	Federation of Bakers
Contract Food Ltd	Federation of Danish Pig Producers & Slaughterhouses
Cookie Man Ltd.	Federation of Jain Organisations
Co-operative Group	Federation of Synagogues
Co-operatives UK	Fibrisol Service Ltd
Coors Brewers Plc	Findus Group
COSUCRA	Firmenich, Wellingborough (UK) Ltd
Cott Beverages Ltd	Fish Technology Consultant
Council for Responsible Nutrition	Fishmonger's Company
Council Ltd	Food Additives and Ingredients Association
Countryside Alliance	Food Additives and Ingredients Association
Coventry Health Authority	Food and Drink Federation
Craigavon Area Hospital Group	Food Brand Group
Cranberry Foods	Food Commission UK Ltd
Cullinane Associates Ltd	Food Consultancy
Cumbria County Council	Food Engineering International Magazine
Cumbria County Council	Food GB Ltd
D & T Association	Food Labelling Database
Dabur India Ltd	Food Law Group
Dabur Research Foundation	Food Standards Agency - Northern Ireland
Dailycer Ltd	Food Standards Australia New Zealand
Dairy Council	FoodChain Europe Ltd
Dairy Crest Group plc	Foods Matters Magazine
Dairy UK Ltd	Forum for Private Businesses
Dale Farm (GB) Ltd	Forum Products Limited
Danish Bacon & Meat Council Ltd	

List of Interested Parties

Annex D

Frensenius Kabi Ltd
Fresh Produce Consortium
Fresh-Pak Chilled Foods Limited
Friday's Ltd
Friends of the Earth
FSA Advisory Committee for Wales
Fuel PR (Clients Include Danone)
G R Lane Health Products Ltd
Galactosaemia Support Group
General Dietary Ltd
Gin & Vodka Association
GIRACT
GIRAG SA
Glenryck Foods Ltd
Gloucester City Council
GM Freeze Campaign
Goodman Derrick
Government of Western Australia
Greencity Wholefoods
Greencore Grocery
Greenwoods Solicitors LLP
H J Heinz
H M Prison Service
H T Webb & Co Ltd
Halal Food Authority
Halal Meat
Halewood International Ltd
Halton Borough Council (889)
Hampshire County Council
Hampshire County Council
Hampshire Scientific Services
Handmade Cake Company
Harrods Ltd
Harrow London Borough Council
Hartwell Food Research Ltd
Hazlewood
Healan Ingredients Ltd
Health Care Products
Health Food Manufacturers' Association
Heather Paine Associates
High Commission for the Republic of South Africa
Hildreth & Cocker Ltd
HM Prison Service Catering Group, Peat House
Honey Association
Hospital Caterers Association
Howard Foundation Research Group
HUSH (Haemolytic Uraemic Syndrome Help)
Ice Cream Alliance
Icefresh Foods Limited
Ilchester Cheese Co Ltd
ILS Ltd
Imams and Mosques Council (UK)
Incorporated Society of British Advertisers
Independent Nutrition Logic
Innocent Ltd
Institute of Education
Institute of Food Research
Institute of Food Science & Technology (IFST)

Institute of Food Science and Technology
Institute of Grocery Distribution
Institute of Refrigeration
Inter Faith Network for the UK
International Fish Meal & Oil Manufacturers Association
International Flight Catering
International Marketing
International Meat Traders Association
International Pectin Producers' Association
International Soft Drink Council
Interserve (Facilities Management) Limited
Isbourne Environment Ltd
ISKCON
Islamic Centre of Glasgow
Islamic Food & Nutrition Council
Islamic Forum of Europe
Islamic Shariah Council
Isle of Man Government
ISP Alginates
J Ralph Blanchfield Consultancy
J Sainsbury plc
James Gilbertson & Co
Jean Garon Public Relations
Jetro London
John Taylor and Son
John West Foods Ltd
Johnston Consulting
Joint Council for Anglo Caribbean churches
Just Rachel Quality Desserts
K J Lovering & Co Ltd
Kapajo.com
Keller & Heckman LLP
Kellogg Company Ltd UK
Kelloggs Europe Trading Ltd
Kent County Council Trading Standards
Kerry Foods Ltd
Kettle Foods
Kikkoman Trading Europe Gmbh
Kinnerton Confectionary Co Ltd
Kitchen Range Foods Ltd
Kraft Foods UK Ltd
L Hepner & Associates Ltd
La Leche League (Great Britain)
Laboratory of the Government Chemist (LGC)
Lambeth Trading Standards
Lancashire County Council
Law Commission
Lawcode
Lawdata Ltd
Lawrence Graham
Lead Development Association International
Leatherhead Food International
Leeds Metropolitan University
Leicestershire County Council
LGC Limited
Lidl UK GmbH
Linx Printing Technologies Plc

List of Interested Parties

Annex D

Local Authorities Co-ordinators of Regulatory Services	Nestle Confectionery (UK)
London Borough of Barking & Dagenham	Network of Sikh Organisations UK
London Borough of Barnet Council	Neville Craddock Associates
London Borough of Brent	New Covent Garden Food Co Ltd
London Borough of Southwark	NEWCASTLE UPON TYNE CITY LIBRARY
London Metropolitan University	Newspaper Society
London Retail Meat Traders Association	North Yorkshire East Federation of Women's Institute
Lovell White Durrant Solicitors	Norton Rose
Lovells	Nothamptonshire Country Council
Lyons Tetley Ltd	Nottingham County Council
LYSI HS	Nutragen Ltd
Macfarlanes	Nutricia Ltd
Maltsters Association of Great Britain	Nutrilaw
Manchester Rusk Co Ltd	Nutrilicious
Mardon Plc	Nutrition Society
Margaret Anderson & Associates	Nutritional Healthcare R & D
Markazi Jamiat Ahle Hadith	O&F Consulting
Marks and Spencer plc	Oddbins
McCormack Foods	Odysea Ltd
McDonald's Restaurants Ltd	ORAFIT
McKenna & Co	Orangina Group
Medicines and Healthcare products Regulatory Agency	OrganisationName
Meridian Foods - technical department	Organix Brands Plc
Micron2 Ltd	Oxfam Fair Trading Company
Midwives Information and Resource Service	PepsiCo UK & Ireland
Milton Keynes Council	Perrigo UK
Ministry of Defence	Pizza Hut (UK) Limited
MJSR Associates	Plymouth and District Soroptimist International
Moy Park Ltd	Potters Herbal Supplies Ltd
MP Media Services	Power Health Products
Muller Dairy (UK) Limited	Premier Foods Ltd
Multi Labels Limited	Premier Grocery Products Ltd
Muslim College	Prime Minister's Office
Muslim Doctors and Dentists Association	Proprietary Association of Great Britain
National Association of British and Irish Millers	Protein Technology International
National Association of Cider & Perry Makers	Provision Trade Federation
National Association of Health Stores	Quality Meat Scotland
National Association of Master Bakers	Queen Elizabeth Hospital
National Beef Association	Quest Vitamins Ltd
National Childbirth Trust	QVC
National Consumer Federation	R.Twining and Company Limited
National Council of Hindu Temples UK	Reigate and Banstead Borough Council
National Council of Women of Great Britain	RHM Grocery
National Dried Fruit Trade Association	Rio Trading Company (Health) Ltd
National Edible Oil Distributors Association	Rocwell Natural Mineral Water
National Farmers' Retail and Markets Association	Ron Dewdney Ltd
National Farmers Union (NFU)	Rotherham Health Authority
National Federation of Fisherman's Organisations	Royal College of Midwives
National Federation of Meat and Food Traders	Royal College of Paediatrics and Child Health
National Federation of Women's Institutes	Royal College of Physicians
National Heart Forum	Royal Commission on Environmental Pollution
National Institute for Health and Clinical Excellence	Royal National Institute for the Blind
National Institute of Medical Herbalists	Royal National Institute of Blind People
National Market Traders' Federation	Royal Pharmaceutical Society of Great Britain
National Pig Association	Royal Society for Public Health
National Society for Phenylketonuria	Rupert Stanley College of further
	Ryvita Co Ltd

List of Interested Parties

Annex D

S&N UK	University of Birmingham
Samuel Smith Brewery	University of Bradford
Samworth Brothers Limited	University of Dundee
School of Science & Technology	University of Reading
Scotch Whisky Association	University of Sussex
Scottish Executive Rural Affairs Dept	Univ-Vite Export Ltd
Scottish Federation of Meat Traders Association	Vegan Society
Scottish Food and Drink Federation	Vegetarian & Vegan Foundation
Scottish Salmon Producers' Organisation	Vegetarian Economy and Green Agriculture
SEAFISH	Vegetarian Society of the United Kingdom
Sefcol Ingredients Limited	Venture Foods (UK) Limited
Shellfish Association of Great Britain	Vinegar Brewers' Federation
SHS International Limited	Vion Food Group UK
Simkins Partnership	Vitriton UK Ltd
Simmons & Simmons Solicitors	Voicedale Ltd
Simply Organic - Serious Food Company	Walker & Sons (Leicester) Ltd
Simtom Food Products	Walsall Metropolitan Borough Council
SiS (Science in Sport) Ltd	Warwickshire County Council
Sleaford Quality Foods Limited	Weetabix Limited
Slough Borough Council	Welsh Assembly Government
SMA Nutrition	Welsh Food Alliance
Small Independent Brewers Association	Wessex Foods
SMH Consultancy	West Berkshire District Council
Snack, Nut & Crisps Manufacturers Association	West Yorkshire Joint Services
Sodexo UK & Ireland	Western Group Environmental
Somerfield Stores Limited	Westler Foods Ltd
South Bank University	Which?
Southall Area Community Network	Whitby Seafoods Ltd
St George's, University of London	Whitehouse Consultancy Ltd
Staffordshire County Analyst	Wickham Laboratories Ltd
Starbake Yorkshire Ltd	Wickham Laboratories Ltd
Stephen Rhodes Associates	Wiltshire County Council
Stute Foods Ltd	Wiltshire Direct Services
Sugar Bureau	Wine and Spirit Trade Association
Surrey County Council	Women's Food & Farming Union
Surrey Trading Standards	Worcestershire Scientific Services
Tesco Stores plc	Wrights of Murphy
The Basic Skills Agency	www.clearlabelling.com
The Food Commission	XYROFIN (UK) LTD
The London Beth Din - Kashrut Division	Yakult UK Ltd
The Royal College of Midwives	Zoroastrian Trust Funds of Europe
THOMAS LOWNES and Co Ltd	
Thompson & Capper Ltd	
Thorntons plc	
Traditional Farmfresh Turkey Association	
Transport and General Workers' Union	
Treats Ice Cream Ltd	
Udex Ltd	
UK Action Committee on Islamic Affairs	
Unigreg Limited	
Unilever plc	
Unilever UK limited	
Union of Muslim Organisations of UK & Eire	
Union PSD	
United Biscuits (UK) Ltd	
United Group RMD	
United Kingdom Vineyards Association	
University Glyndwr	



Short Guidance

LEGAL REQUIREMENTS FOR FOOD DATE MARKING

This short guide to compliance with the law has been prepared particularly with small businesses in mind. Food businesses who do not have in-house knowledge or expertise to decide which date marks should apply to which foods should seek expert advice, e.g. from their Local Authority or a specialist food consultant.

How businesses can comply with the legislation

1. The main piece of EU legislation for date marking of food is Directive 2000/13/EC, which is implemented in Great Britain by the Food Labelling Regulations 1996 as amended (SI 1996/1499) and in Northern Ireland by the Food Labelling Regulations (Northern Ireland) 1996 (SR 1996/383). This requires most pre-packed food to carry a date mark which can be one of two types:
 - The **'best before'** date will be suitable for most food and indicates the period during which the food can be reasonably expected to maintain its optimal condition if properly stored. It relates more to food quality.
 - The **'use by'** date is required for foods which are highly perishable from a microbiological point of view **and** are therefore likely after a short period of time to pose an immediate danger to human health. This relates to food safety.
2. It is the responsibility of the person who labelled the food originally (i.e the manufacturer, EC packer or seller) to determine and apply the correct date mark and storage instructions needed to achieve that shelf-life.
3. Where food businesses do not have the expertise to determine what the correct date mark should be for their product, we strongly advise they seek expert advice.
4. The law stipulates how date marks must be presented on the label:
 - a. The words **'best before'** should be followed by:
 - i. the date up to and including which the food can reasonably be expected to retain its specific properties if properly stored, **and** any storage conditions which need to be observed.
 - ii. The date should be expressed in terms of day, month and year in that order.
 - iii. However, other formats may be used depending on the shelf-life, so for example,
 1. For less than 3 months, you can use **'best before'** with day and month only
 2. For between 3-18 months, **'best before end'** with month and year only
 3. For more than 18 months, **'best fore end'** with month and year only or just the year. (e.g.. 'best before end '1999)
 - b. The words **'use by'** should be followed by the date together with any storage conditions which are required to keep the food safe up until that date.
 - c. The date, **or** the date together with any storage conditions which need to be observed, may be printed somewhere else on the packaging as long as the words **'best before'** or **'use by'** are followed by an

indication of where the date will be found. This should be specific, for example 'see neck' or 'see below label'.

- d. The date mark must be conspicuous, legible and durable. Black inkjet on a dark green background, for example, is not acceptable; nor ink-jetted onto pictures or other writing.
5. It is illegal to remove or alter the date mark unless each removal or alteration is authorised in writing by the person who originally set the date mark.
6. It is illegal to sell food after the 'use by' date. But food can be sold after the 'best before' date provided it still complies with food safety regulations. These make it an offence to sell or supply food which does not meet food safety requirements, or which is not of the nature, substance or quality demanded by the consumer.
7. The following food/foods are not required to have a date mark under the Food Labelling Regulations, although other legislation would apply:
 - Loose food, including food sold in catering establishments;
 - Food that is pre-packed for direct sale as defined in the Food Labelling Regulations 1996 as amended;
 - Any food prepared otherwise than in the course of a business carried on by the person preparing it;
 - Fancy confectionery products made up almost of entirely flavoured or coloured sugar or which are individually wrapped and are intended to be sold as single items;
 - Food sold in indelibly marked bottles;
 - Foods sold in seasonal selection packs as long as all food inside bear an appropriate date mark;
 - Fresh fruit and vegetables, but not sprouting seeds such as legumes, which are unpeeled and uncut;
 - Wines or grape musts;
 - Sparkling wines and aerated sparkling wines;
 - Liqueur wines, semi sparkling wines and aerated semi sparkling wines;
 - Any spirit drinks;
 - Any drink with an alcoholic strength by volume of 10 per cent or more;
 - Wine, liqueur wine, sparkling wine, aromatised wine and any similar drink obtained from fruit other than Grapes (e.g. cider/perry);
 - Any soft drink, fruit juice or fruit nectar or alcoholic drink, sold in a container containing more than 5 litres and intended for supply to catering establishments;
 - Chewing gums and similar products;
 - Any additive sold as such;
 - Edible ices in individual portions;
 - Any flour confectionery and bread which is normally consumed within 24 hours of its preparation;
 - Vinegar;
 - Cooking table salt and
 - Hens eggs
8. More detailed information on how to comply with the legislation on the date marking of food is available at XXX.